IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (WCA) No.341 of 2003.
Reserved on:18.04.2007.
Decided on: May 15, 2007

Jiwan Singh alias Mohinder Singh .....Appellant.

VERSUS

Executive Engineer & Ors. .....Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Sunil Chaudhary, Advocate.**

For the Respondents: **Mr.Vijay Thakur, Dy.A.G.**

Kuldip Singh, Judge

The appellant / claimant is in appeal against the order dated 10.12.2002 passed by the Commissioner Workmen's Compensation, H.P. P.W.D. C.Z. Mandi in case No.17/92 whereby the Commissioner rejected the claim petition of the appellant / claimant.

2. The brief facts, as emerge from the claim petition, are that on 14.12.1990 at about 11 a.m. when the claimant was cleaning the water outlet of the pipe line meant for irrigation, accidentally he had sudden fall in a ***Haudi*** (water outlet) and received serious injuries in his spinal cord as well as on his other parts of the body. He was removed to District Hospital, Mandi where he was hospitalized from 15.12.1990 to 20.12.1990. He was later on referred to Rajindra

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

Hospital, Patiala where he was admitted on 21.12.1990 and was discharged on 9.1.1991. He was advised to visit the Hospital after every two months. He was under treatment at Patiala at the time of filing of the claim petition. He has spent about Rs.50,000/- on his treatment including medicines, travelling expenses, food etc. He was earning Rs.20/- per day. In addition, he used to work at odd hours and earn additional amount of Rs.20/- per day. On account of accidental injury he has suffered loss of Rs.40/- per day. He has become permanently 100% disable. The claimant was the only bread earner of the family consisting of his old parents and his own family consisting of four members including the claimant. The accident has taken place during the course of employment of the claimant with the respondents. The Junior Engineer was aware of the accident. The officials of the respondents used to visit the claimant in Hospital but they have not paid any amount to the claimant nor they rendered any assistance to him. The claimant has claimed Rs.3 lacs compensation.

3. The respondents filed reply and contested the claim of the claimant. In the reply, preliminary objections of limitation, non joinder of necessary parties, *locus standi* of the claimant to file the claim petition, maintainability and lack of cause of action have been taken. On merits, it has been submitted that claimant was employed as labourer at the rate of Rs.20/- per day. It has been denied that any accident has taken place as pleaded by the claimant and he suffered any injury as alleged. It has been submitted that claimant along with other

labourers were deployed for construction of field channels in Mohal Rara under Balh Valley Medium Irrigation Project, as such, question of cleaning any water outlet by the claimant does not arise. The respondents in brief denied the claim of the claimant.

4. The Commissioner returned the findings that accident of claimant did not occur on 14.12.1990 while on duty and, therefore, respondents are not liable to pay any compensation to the claimant, hence, dismissed the claim petition.

5. The appeal has been admitted on the following substantial questions of law:

> "(i) *Whether the Commissioner below is justified to hold that the appellant has not met with an accident on 14.12.1990 in the course of employment?*
>
> *(ii) Whether document Ext.RW/4 (sic RW/A) was fraudulently procured by the Assistant Engineer / respondent No.2 herein from the appellant under misrepresentation of the facts, if so, its effect?* "

In addition to the above substantial questions of law, the parties have also been heard on following substantial question of law No.(iii) which emerges from the issues framed by Commissioner but was not actually decided by him:-

(iii) *Whether the claim is within limitation*?

6. I have heard the learned counsel for the parties and have also gone through the record.

7. Learned counsel for the appellant / claimant has submitted that on the basis of material on record, the Commissioner has drawn a wrong inference that claimant did not suffer any injury during the course of employment with respondents. The pleadings and evidence have been misconstrued and mis-interpreted, inadmissible evidence has been considered, Ext.RW-4 has been wrongly relied to reject the claim of the claimant. It has been submitted that the claimant has proved the accident and he suffered injuries during the course of employment with the respondents.

8. On the contrary, learned counsel for the respondents projected the same line of reasoning as recorded by Commissioner in the impugned order. It has been submitted that the Commissioner after appreciation of evidence has rejected the claim of the claimant. There is no substantial question of law which requires determination by this Court.

9. Before discussing the substantial questions of law, I think it proper to refer one aspect of the case which I have noticed from the record of the Commissioner. The claim petition was filed in August / September 1992. The issues were framed on 18.7.1994, claimant closed his evidence on 2.12.1994 and respondents closed their evidence on 21.12.1994. Thereafter on the application dated 24.2.1995 of the claimant Dr.Harish Behl (PW-4) was examined on

28.1.1997 and the case was fixed for arguments on 12.2.1997. The Commissioner examined Amar Singh, J.E. on 30.9.1999 at the instance of claimant. The Commissioner on 30.10.1999 took on record Ext.RW/A letter dated 8.2.1994, Ext.RW/B affidavit dated 27.11.1992 of Ram Lal, Ext.RW/C affidavit dated 27.11.1992 of Gopal Chand, Ext.RW/D affidavit dated 29.7.1993 of Naria Ram, Ext.RW/E affidavit dated 19.7.1993 of Mast Ram, Ext.RW/F affidavit dated 19.7.1993 of Jawahar Lal, Ext.RW/G dated 19.7.1993 of Shankar, Ext.RW/H dated 19.7.1993 of Daya Ram and directed the respondents to produce deponents of the affidavits. On 8.12.1999 statements of Shankar, Gopal Chand and Ram Lal were recorded. On 28.4.2000 statement of Y.R. Gupta, J.E. was recorded and on 9.8.2001 statement of Tej Singh was recorded.

10. The procedure to be followed by Commissioner for disposal of a case under the Act has been provided in Para-V of the Himachal Pradesh Workmen's Compensation Rules, 1951 (for short 'rules'). Under rule 28 issues are to be framed, judgment is to be as per rule 32, Code of Civil Procedure 1908 has been made applicable to limited extent under rule 41.

11. In the present case, the issues were framed on 18.7.1994. The Commissioner took more than 10 years for deciding the case. The statements of witnesses were recorded again and again without considering whether the statements of such witnesses are actually necessary and otherwise required by way of additional

evidence for determination of real controversy between the parties. The claim petition has not been decided as per the issues framed on 18.7.1994. The Commissioner has committed irregularities in conducting the proceeding. However, keeping in view the fact that the alleged accident had taken place on 14.12.1990 and more than 16 years have passed and claimant is still in litigation, in these circumstances, I am of the view that even if the Commissioner has committed irregularities in conducting the proceedings but since parties were aware of their respective case and they were given opportunity to project their case and lead evidence on the issues involved, therefore, I proceed to decide the case finally in the appeal without recourse to remand the case.

Questions No.1 & 2:

12. The claim petition was filed in August / September 1992. The claimant has pleaded that accident took place on 14.12.1990 when he was cleaning the pipe line of the water outlet during the course of employment with respondents and suffered injuries seriously as a result of which he has suffered permanent 100% disability. In the reply, the respondents have admitted that on 14.12.1990 the claimant was on duty but they have denied that any accident has taken place on that date in which claimant suffered any injury. Claimant has appeared as his own witness as PW-1 and has supported his case by stating that he met with an accident on 14.12.1990 when he was cleaning water outlet and in the accident he suffered serious injuries

for which he got treatment at different places. He has stated that PW-2 Julfi Ram and PW-3 Krishan removed him from the spot and they took him in the house of a Rajput. He has been cross examined but nothing favourable has been elicited by respondents from his cross examination. The document Ext.RW/A was not put to him, rather a suggestion was given to him in cross examination that his signatures were obtained on blank paper. PW-2 Julfi Ram has stated that on 14.12.1990 he was on duty and claimant had a fall in the water outlet. He was taken to the house of a Rajput. He has proved the presence of Krishan on the spot at that time. In cross examination it has been suggested to PW-2 Julfi Ram that the accident has not taken place at the site as stated by him but at some other place. PW-3 Krishan has also stated that on 14.12.1990 he saw claimant had a fall in the water outlet. He has also stated that he was working in another water outlet. He and Julfi Ram (PW-2) took the claimant to the house of a Rajput. In cross examination, he has stated that there were about 15/20 water outlets at site. DW-1 G.D.Thakur has admitted that on 14.12.1990 claimant was on duty. He has admitted existence of water outlet at Rara. DW-2 Ram Lal, Supervisor has admitted that on 14.12.1990 the claimant was on duty. He was working on water channel. No labour was deployed for cleaning the water outlets. He has stated that in Rara and Kiarta there were about 60 water outlets. He showed his ignorance whether PW-2 Julfi Ram and Hukam Chand were present at the relevant time. DW-3 Hukam Chand has stated that claimant was

on duty on 14.12.1990. DW-4 Gopal Chand has admitted the presence of claimant on duty on 14.12.1990.

13. PW 4 Dr. Harish Behl, has proved disability certificate of claimant Ex. PA, whereby he has suffered 100% disability. On the directions of Commissioner, statements of Amar Singh, J.E., Yog Raj Gupta, J.E and Tej Singh, J.E., were recorded. Amar Singh, Junior Engineer has deposed that on 14.12.1990, he was on strike and was not aware of any accident of the claimant. Yog Raj Gupta, Junior Engineer has stated that he was not aware that claimant was working on particular layout work on that day. Tej Singh, Junior Engineer has stated that claimant was working in Zone No.6, Kiyarta. In December, 1990, during his tenure no accident had taken place of the claimant. The letter dated 8.2.1994 Ext.RW/A and affidavits Ext.RW/B to Ext.RW/H were taken on record. In addition to this, statements of Shankar, Gopal Chand and Ram Lal were also recorded.

14. The perusal of above evidence would show that claimant, in fact, has suffered an injury and as a result of that injury, he got 100% disability, vide disability certificate Ex. PA. But material question is whether claimant suffered the injury resulting into his permanent 100% disability in the accident as claimed by him during the course of his employment with the respondents or not. The claimant himself and PW 2 Julfi Ram, as well as PW 3 Krishan, have specifically stated that claimant suffered injury on 14.12.1990 in an accident during the course of employment of the claimant with the respondents. The PW-

1, PW-2 and PW-3 have been cross examined but nothing came in their cross examination to discredit their testimonies. It has been simply submitted that the testimonies of PW-1, PW-2 and PW-3 are not to be believed as they have not given the true version but no sound reason has been given to disbelieve these witnesses.

15. The learned Deputy Advocate General has submitted that claimant has sustained injury by a fall from *Beul* tree and for that purpose he has relied upon Ex. RW/A, alleged writing of claimant. This writing was not put to the claimant, when he appeared as his own witness, so as to explain whether the writing was executed by him or prepared at his instance or not. Writing Ex. RW/A is dated 8.2.1994. The respondents filed their reply on 22.2.1994 but in the reply neither the reference of Ex. RW/A has been given nor it has been pleaded that the claimant has sustained injury by a fall from a *Beul* tree.

16. PW-2 and PW-3 were working at the same place where claimant was working on 14.12.1990. They are the eye witnesses and they helped claimant immediately after the accident and removed him to a nearby house. The claimant thereafter got treatment at various places but did not recover. PW-4 Dr.Harish Behl has produced Ext.PA showing 100% permanent disability of the claimant. The Commissioner has drawn wrong inference from the material on record and returning the finding that claimant has not proved that the claimant sustained injury in an accident during the course of employment with the respondents, such finding is not sustainable. On the basis of

material on record and in the light of above discussion, it is held that claimant sustained injury in an accident on 14.12.1990 during the course of his employment with the respondents. It is also held that Ext.RW/4 (sic Ext.RW/A) was procured from claimant fraudulently and by misrepresenting the facts and is thus not binding on him. The substantial questions of law No.1 and 2 are decided in favour of the claimant and against the respondents.

Question No.3:

17. The accident took place on 14.12.1990. The claimant suffered serious injury in the accident and ultimately 100% permanent disability but he filed the claim petition in August / September 1992. As per Section 10 of the Act, claim petition can be filed within two years from the date of accident. The claimant filed the petition within two years, therefore, it is held that the petition is within time. The substantial question of law No.3 is decided in favour of the claimant and against the respondents.

18. The net result of above discussion that the findings recorded by the Commissioner that the claimant did not suffer any injury in an accident during the course of employment with the respondents are reversed.

19. Now the question is of compensation to be paid to claimant. The claimant was being paid Rs.20/- per day as wages meaning thereby the monthly wages of the claimant at the time of accident were Rs.600/-. He has not proved any expenses incurred on

his treatment. He has suffered 100% permanent disability. The claimant was 22 years of age at the time of accident, therefore, factor of 221.37 will apply in his case and he is entitled to compensation equal to 50% of the monthly wages i.e. Rs.300 x 221.37=Rs.66,411/- along with interest at the rate of 6% per annum from the date of accident till 15.9.1995 (when rate of interest was increased by Act No.30 of 1995), thereafter along with interest at the rate of 12% per annum till payment. The respondents have failed to justify the delay in payment of compensation to the claimant, therefore, on the compensation amount the respondents are liable to pay to claimant penalty equal to 50% of the compensation amount.

20. In view of the above discussion, this appeal is accepted, the impugned order dated 10.12.2002 passed by the Commissioner Workmen's Compensation, H.P.P.W.D. C.Z., Mandi in case No.17/92 is set aside and the claimant is held entitled to compensation, interest, penalty from respondents, as observed above. The respondents shall also pay the costs amounting to Rs.5000/- to the claimant.

(Kuldip Singh)
Judge.

May 15, 2007
(soni)